

Preparation and Distribution of Biological Assessments and Biological Opinions

Purpose

The purpose of the procedure is to outline the preparation and distribution of a Biological Assessment (BA), completed by NCDOT, and the subsequent Biological Opinion (BO), completed by the United States Fish and Wildlife Service (USFWS). Although the procedure is written for the Natural Environment Section (NES) in-house staff, it also applies to any consultant under contract with NES to produce a BA.

Background

The Endangered Species Act (ESA) directs all Federal agencies to work to conserve endangered and threatened species and to use their authorities to further the purposes of the Act. Section 7 of the Act, called "Interagency Cooperation," is the mechanism by which Federal agencies ensure the actions they take, including those they fund or authorize, do not jeopardize the existence of any listed species.

When a Federal agency determines, through a biological survey or other review, that its action is *likely to adversely affect* a listed species, the agency submits to the USFWS a request for formal consultation, along with a Biological Assessment. The response to this request is called a Biological Opinion.

Responsibility

The NES Environmental Coordination and Permitting Group (NES-ECAP) is responsible for submitting the survey request to NES Biological Surveys Group (NES-BSG). The NES-BSG will complete surveys, as needed, and determine if the proposed project may incur adverse effects to the subject species or critical habitat. If so, the NES-BSG is responsible for completion of the BA. Other responsibilities are listed below under "procedures".

Scheduling and Time Constraints

For projects which require formal consultation, NES-BSG prefers to operate with the following schedule. Submittal dates for each milestone are based on project let date, and allow for completion of the BO by the time the project permit applications must be submitted. A general submittal schedule should be:

- Let minus 7 months (for Nationwide Permit) or 9 months (for Individual Permit or CAMA Permit): *Permit application target date*, as imposed by NES-ECAP Group
- Let minus 11.5 months: *Final BA submittal to USFWS via FHWA* (allows 135 days, as imposed by Section 7 of the Endangered Species Act, for USFWS to review the Biological Assessment and provide a Biological Opinion)
- Let minus 12.5 months: *Final BA submittal to FHWA* (allows FHWA time to review BA and distribute submittal to USFWS)

- Let minus 15 months [if Nationwide Permit (generally, a CE)] or 17 months [if Individual Permit (generally an EA or EIS)]: *Permit drawings and final roadway plans requested by NES*. [Allows a total of 2.5 months (for NWP) or 4.5 months (for IP or CAMA) for: review by NES-ECAP and NES-BSG, revisions by the hydraulics unit, and incorporation into the BA by BSG].

***Currently, NES-ECAP asks for permit drawings 12 months prior to let for Nationwide Permits and 14 months prior to let for IP or CAMA permits. NES-BSG needs permit drawings 3 months earlier, if the project requires a BA. As an example, a project with a let date of January 1, 2020, final design/permit drawings would be due to NES by October 1, 2018 or August 15, 2018, depending on permit type.

Procedures

These procedures make the assumption that field work has already been completed to determine the presence of protected species or critical habitat within the project vicinity, and therefore that the project will likely have an adverse effect on that species or habitat.

If it is determined that a project is going to have adverse effects on a protected species, thus, potentially requiring formal consultation with the USFWS, preparation of a BA should begin. NES-BSG Biologist should notify all DOT project team members via email using [these instructions](#), explaining that an accelerated schedule for design will be needed to allow time for preparation of the BA. The accelerated schedule, including dates associated with the milestones outlined above in “Scheduling and Time Constraints” should be provided to the team members. The email should list the date of the Let Review Meeting when permit drawings are to be requested per the BSG timeframe.

To meet the aforementioned schedule, permit drawings must be requested three months earlier than typically requested. That means that they should be requested at the Let Review Meeting that occurs 15 months [if Nationwide Permit (generally a CE)] or 17 months [if Individual Permit (generally an EA or EIS)] prior to the project let date. At least one week prior to the target Let Review Meeting, NES-BSG will send an email to the NES-ECAP group leader to request permit drawings from Hydraulics Unit, Roadway Unit, Utilities Unit and Structure Management Unit earlier than usual at the next Let Review Meeting.

Once permit drawings are received, NES-ECAP will email their comments to NES-BSG within two weeks of receiving the drawings. NES-BSG will compile all the comments, and email all comments to the Hydraulics Unit.

Both informal and formal consultation should follow the guidance presented in USFWS’s [“Endangered Species Act Consultation Handbook: Procedures for Conducting Section 7 Consultation and Conferences” \(1998\)](#). This includes the general written format of the Biological Assessment.

Procedures for Consultants

General for all projects: During the project scoping meeting and/or at the time the Notice to Proceed is provided, consultants should provide the name of one person who will serve as the point of contact for the duration of the project to the NES-BSG Biologist.

NES-BSG will be the primary point of contact for the consultant. Consultants should NOT contact USFWS, FHWA, or USACE or other NCDOT employees without first obtaining authorization from the NES-BSG Project Manager. In the event that the consultant is authorized to contact these personnel, the **consultant should copy NEU-BSG Biologist on all correspondence. If contact is made via phone call, the minutes of that call should be provided to NEU-BSG Biologist.**

Draft versions of the BA should be submitted to NEU-BSG Biologist and should NOT be submitted directly to USFWS or FHWA/USACE, or other NCDOT employees. NEU-BSG will submit all draft and final documents to these personnel. Refer to [this section](#) for project deliverables and submittal schedule/responsibilities. Consultants should NOT discuss conservation measures with USFWS or FHWA/USACE, instead deferring to NEU-BSG.

Draft BA Submittal and Review

- BAs outsourced through NES will be submitted to the NES-BSG Biologist. The consultant will include their QA/QC sheet. At a minimum, the NES-BSG Biologist and a Supervisor will review the BA. If time allows, an additional peer review can be added.
- Draft BA submittals from any consultant will contain one .doc (Microsoft Word) and one .pdf (Portable Document Format) version.
- For a BA submitted by consultants, the NES-BSG Biologist will provide comments to the consultant based on the reviews.

Final BA Submittal and Review

- Submittals will be made to the appropriate person as discussed above.
- All Final submittals from consultants will contain the following:
 1. Responses to review comments and QA/QC sheets. NES reserves the right to not accept the BA as final if comments have not been adequately addressed or adequate QA/QC has not been completed.
 2. One stapled hard copy of the BA (The hard copy of the BA may be bound if the report is too large to staple.)
 3. An electronic copy of the BA (in pdf format) including all figures and appendices
 4. An electronic copy of the BA (in Microsoft Word format, text only)
 5. A copy of the Microstation file, if applicable
 6. A copy of the GPS corrected file (.cor), if applicable
 7. A copy of all shapefiles used to create figures
 8. All field notes made during the investigations in pdf form, and
 9. All data collection forms, as applicable.
- Consultants should email files or put them on the NCDOT FTS site (and notify the NES-BSG Biologist).
- Consultants should also include identification of the firm on a second title page of the report.

Distribution of BA and BO

Informal consultation is a lengthy process that involves information exchange between NCDOT, USFWS, a lead Federal agency (typically FHWA, but occasionally USACE, depending on project funding source). Informal consultation involves steps 1 through 4, as listed below. Formal consultation begins at step 5 when the BA is submitted to USFWS and formal consultation is requested. During informal consultation, a draft document may be circulated repeatedly between NCDOT and the federal agencies. The draft document referred to below will be considered the last draft in this circulation.

- 1) NES-BSG collects relevant design information and writes (or contracts with a consultant to write) the Draft BA.
- 2) NES-BSG distributes Draft BA to NCDOT team members (including NES-ECAP) and FHWA or USACE for 14-day comment period, using [these instructions](#). Document will be distributed electronically as a PDF file, or the document will be attached to the email for distribution to FHWA (or USACE) and USFWS. If the document's file size is too large for email, it will be distributed via the NCDOT File Transfer Site (FTS).
- 3) Within the next 14 days, NES-BSG (or consultant) finalizes BA, with consideration of comments received and in consultation with other NCDOT team members, as appropriate.
- 4) NES-BSG distributes final BA to NCDOT team members and FHWA (or USACE), copying NES-ECAP and USFWS. Document will be distributed electronically as a PDF file and NCDOT recipients will be directed to its location on the TIP Server, or the document will be attached to the email for distribution to FHWA (or USACE). A Microsoft Word version of the document (text only) will also be emailed to USFWS. If the file size of the document is too large for email, it will be distributed via the NCDOT FTS. Two hard copies will be mailed directly to FHWA (or USACE) for submittal to USFWS. A cover letter will be attached to the hard copies. The cover letter template can be found [here](#).
- 5) FHWA (or USACE) officially forwards BA to USFWS, requesting review and a Biological Opinion.
- 6) NES-BSG follows up with FHWA (or USACE) in one week if not copied on FHWA forward to USFWS.
- 7) NES-BSG coordinates directly with USFWS to address any concerns or questions
- 8) USFWS provides a draft BO to NES-BSG for review.
- 9) NES-BSG distributes draft BO to FHWA (or USACE) and NCDOT team members using [these instructions](#) for 14-day review and comment period. Document format will be distributed as stated in number 2, above. In addition, the project commitments will be copied from the document and placed within the body of the email, as a way to make it more convenient for folks to review them.
- 10) NES-BSG collects and forwards comments to USFWS, as applicable.
- 11) If necessary, NES-BSG and USFWS work together to address NCDOT concerns, involving other NCDOT staff as needed, for a period of 14 days.
- 12) USFWS issues final BO.
- 13) NES-BSG distributes final BO to NCDOT team members using [these instructions](#). Document will be distributed electronically as a PDF file and NCDOT recipients will be directed to its location on the TIP server. Electronic file names will be by TIP number (i.e. B-1234 Biological Opinion.doc)

Electronic Distribution of Draft BA • Final BA • Draft BO • Final BO

Attach the document to your email using the following method. Records of distribution should be kept in the project file.

1. Access the appropriate distribution list in Outlook by selecting "Contacts".
2. Under Shared Contacts, select the "Draft BA, Final BA, Draft BO Dist List" list if you are distributing the draft BA, final BA, or draft BO, or "Draft Permit Conditions and Final BO Dist List" if you are distributing the Final BO. *(If this is not present, contact maturchy@dot.gov and request shared access to the distribution lists.)*
3. Select the correct division, and click the E-mail button at the top of the window.
4. Add the following people to the distribution list:
 - Roadway, Hydraulics, Roadside Environmental, and PDEA Planning Engineer
 - Randy Griffin, P.E , Mitigation Implementation rgriffin@ncdot.gov
 - LeiLani Paugh, ICI/On-Site Mitigation Group lpaugh@ncdot.gov
 - The appropriate FHWA representative:
 - Div 1, 2, 3, 4, 6 Ron Lucas ron.lucas@dot.gov
 - Div 5, 7, 8, 9 Felix Davila Felix.Davila@dot.gov
 - Div 10, 11, 12, 13, 14 Mitch Batuzich mitch.batuzich@dot.gov
 - Appropriate ECAP Group Project Manager
 - If you know there are specific folks within each Unit or Division who should review the document, be sure to copy them on the email also, to expedite the review process.
5. Example email language:

Example email language for **requesting an accelerated schedule for design:**

Due to the presence of <protected species name> within or near the study area for project <TIP>, it is anticipated that formal consultation with the US Fish and Wildlife Service will be necessary. Therefore, design for this project will be needed earlier than typically required to allow adequate time for preparation of the Biological Assessment. In particular, note that permit drawings will be requested XX months, rather than XX months prior to the project let date, probably during the DATE Let Review Meeting.

A general schedule of events related to consultation with USFWS is as follows:

- DATE – Permit application submitted to agencies for review
- DATE – Final BA submittal to USFWS
- DATE – BA submittal to FHWA for review
- DATE – Permit drawings requested by NES

The Biological Surveys Group will be coordinating the consultation with USFWS for this project. If you have specific questions about the accelerated timeline for this project, or about protected species issues, please contact me for further information.

Example email language for a **DRAFT Biological Assessment ("BA"):**

Attached to this email is the DRAFT Biological Assessment for project <TIP> (<<<short project description- the replacement of bridge no. 26 over Deep Creek in Carteret County>>>). Please review the document and reply by (14 calendar days from this message) with any comments as soon as possible. If you have no comment, please return an email indicating “No Comment”.

Example email language for a **FINAL Biological Assessment (“BA”)**

Attached to this email is the FINAL Biological Assessment for project <TIP> (<<<short project description- the replacement of bridge no. 26 over Deep Creek in Carteret County>>>). A copy of this document has also been placed in the project file on the DOT TIP Server. If you have questions, please let me know.

Example email language for a **DRAFT Biological Opinion (“BO”)**:

Attached for your files is the DRAFT Biological Opinion for project <TIP> (<<<short project description- the replacement of bridge no. 26 over Deep Creek in Carteret County>>>). If you have questions, please contact <your name>. Note that the Conservation Measures on page X will become Environmental Commitments in the Permit. Please review the document and reply by (14 calendar days from this message) with any comments as soon as possible. If you have no comment, please return an email indicating “No Comment”.

Example email language for a **FINAL Biological Opinion (“BO”)**

Attached for your files is the FINAL Biological Opinion for project <TIP> (<<<short project description- the replacement of bridge no. 26 over Deep Creek in Carteret County>>>). A copy of this document has also been placed on the DOT TIP server. If you have questions, please let me know.

Contacts

- For questions about performing this procedure contact: Jared Gray (jgray@ncdot.gov) or Kathy Herring (mkherring@ncdot.gov).
- Consultants should contact Linda Fitzpatrick (lffpatrick@ncdot.gov) for cost estimate and scoping.

Record of Revision

[illegible]